advertisements as a whole and, indeed, that's what the Court needs to do. And on a motion to dismiss, I might add, you have to accept the allegations as true and all of counsel's arguments with respect to the motion to dismiss are fact based. Essentially, what AT&T says is you can't read the ads that way, that the contract cures whatever misstatements there might be in the ads, and that that's not what we're telling people. That fact argument, that's not an appropriate argument to be making on a motion to dismiss.

The plaintiffs in this case would say when you read the advertisements as a whole, they suggested to us that this service was just as reliable and just as good as wire-based service, and it isn't, and it never has been and that's why the advertisements are misleading.

Now I should I mention that Bastien, you know, specifically says that claims for fraud and deceit do not affect the Federal regulation of the carriers at all. Congress could not have intended to preempt the claims. And there is, indeed, as counsel I think acknowledged, a line of cases, some of which are in New Jersey -- the Weinberg case and DeCaster (phonetic) case -- which specifically say that when you're not challenging the rates, when you're not challenging the service, when you're not challenging the market entry,

but you're talking about the advertisements, they aren't -- those types of claims are not preempted. And I think the Weinberg case does a good job of explaining why that is so.

And the Tenore case which is a Washington case, and I would submit to the Court that the State of Washington's consumer protection statute is not nearly as protective as the State of New Jersey's. The State of Washington said that certain challenges to the service being provided are not challenges on rates. They're challenges on advertising. They're not challenges on market entry. They're challenges on advertising. And this case is about advertising. The plaintiffs maintain the advertisements were misleading and suggested to them that the service was something which it is not. And just, again, I want to be perfectly clear about this. They're allowed to provide whatever service the FCC says they're allowed to provide. What they're not allowed to do is suggest to the consuming public in New Jersey that they're providing something that they're not providing.

THE COURT: Thank you.

MR. PINILIS: Thank you, Your Honor.

THE COURT: Mr. Eakeley, is there anything briefly to which you would like to respond?

MR. EAKELEY: Yes, Your Honor.

Mr. Pinilis says that they're not challenging rates, but the Central Office Telephone case, as well as the Bastien case, make clear that an attack on the adequacy of service is an attack on rates and values. You have to measures rates against something, and if you're complaining that you paid more than what the service was worth, you are attacking rates when you attack the service.

They also claim that this is an advertising case and that Tenore and Weinberg hold that advertising cases are not preempted. Well, that's not quite the case, Your Honor. Advertise -- cases alleging false advertising with respect to billing practices or services such as rounding up are not preempted because they do not attack the adequacy of the infrastructure of the sufficiency of the service. But even in Weinberg, there's an acknowledgment that if the case touches on adequacy of service or infrastructure, it's preempted under the terms of 332. And indeed, in Tenore, the plaintiffs were very careful to say, we are not saying the service is inadequate, we are not saying the rates are unreasonable. We are saying it was false and deceptive not to disclose this rounding-up practice that led to an overcharge. And that is the fundamental

distinction.

Claims, you can address -- you can dress up a claim that the service wasn't what we paid for it and we were misled into signing a contract and committing to a service that was virtually useless and unreliable by them saying, but we're going after the advertising. But if the false advertising has as its subject matter, if the gravamen of the false advertising claim is directed at service or infrastructure, then inevitably the Court is drawn into the type of analysis that is preempted by Section 332.

And just a simple example will explain why. How is a fact finder going to evaluate plaintiff's claims here? They say we're not complaining about adequacy of service or infrastructure, although their complaint clearly does that repeatedly. Is Your Honor going to direct the jury to find that infrastructure was adequate and service was reasonable and yet say, but what you can do is say to see what was promised or represented and compare that to what was received, and somehow evaluate the difference and decide that, in fact, the rates were unreasonable or too high, or they're entitled to a refund based on the difference between those rates and the values? That is rate regulation, Your Honor, and there are no case -- the

cases that address this, Bastien most clearly, so hold.

THE COURT: Do you think that there is some subset of advertisement or disclosure that could be so outrageously unsupportable that it would not be State rate making or affect entry into the market? For example, an absurd example. If the advertisement seriously, and not tongue-in-cheek, said something to the effect, this wireless service is so good you can call Mars. And everyone knows you can't call Mars, and it wasn't intended as a joke. Would that be preempted? In other words, it's a fact that is so clearly unattainable, but the advertisement said it nonetheless, forgetting about whether or not it was reasonable to rely upon it. I'm talking now about --

MR. EAKELEY: Yep. No, I understand the preemption analysis.

THE COURT: -- preemption.

MR. EAKELEY: It's hard to say, and obviously that is not the case before the Court.

The Federal Communications Commission is charged with, by Statute, evaluating the reasonableness of the rates and the service, and the adequacy of the infrastructure. There is a forum here. There is also a very important Federal policy to establish a national regulatory system to advance the development of this

infrastructure. I think we could all conceive of exceptions to just about any rule that might under certain conditions apply. But the general policy is a strong one and it favors Federal regulation and there is, as I said, an alternative Federal forum to police these very claims if, in fact, they attack service or infrastructure.

But I wouldn't want to say categorically that Your Honor's example was -- could not -- could not find sustainable light. But my first reaction is even that ought to go under the Federal scheme to the FCC for policing. They are the watchdog. They are the regulator and they know what they're doing.

THE COURT: Well, at least your answer is consistent with the position because had you taken the other position, my next question would have been where do I draw the line?

MR. EAKELEY: Yes. And then I would have --

THE COURT: And I don't know where you draw the line if, in fact, there is a difference.

MR. EAKELEY: Yeah. I think I might have said, if I had gone the other way, that I'm not sure precisely where that line can be drawn, but it's far behind where the plaintiffs are in this case or could plead. But I think that the Federal policy is clear and clearly

articulated, and Bastien is controlling, I submit.

The last point, and this relates to the motion to dismiss. Mr. Pinilis said that the Court is not authorized to consider on a motion to dismiss documents referred to in the complaint, namely the contract and the advertisements. But you must accept as given plaintiffs' characterization of those ads and that contract, rather than the contract documents themselves.

We point out in a footnote to our reply brief that are no State Court cases directly in point. But our source rule is the same as Federal Rule of Civil Procedure 12B-6 and there are sturdy Federal precedent for permitting a Court on a motion to dismiss to receive, consider and deem controlling documents referred to in the complaint. And plaintiffs have not challenged the contract documents. They are not saying, oh, no, that's not our contract, there's another contract out there. Nor do they say, no, that's not the ad that we're attempting to quote from or, in this case, selectively cite from.

So that's just my answer to Mr. Pinilis on the failure to state a claim part.

THE COURT: Mr. Pinilis, anything else?

MR. PINILIS: If I may. Thank you, Your Honor.

THE COURT: Sure.

MR. PINILIS: The first thing I want to say is that the Federal regulators are not charged with reviewing the advertisements and that's where this is this exception carved out within the Federal scheme to allow states to regulate the advertisements and to regulate the representations made to the consumers within that State. I do not take issue with the assertion that the Federal regulators are the experts on what type of service can be provided, on how it can be provided, on what can be charged for it. But the Federal regulators do not review advertisements. They don't have the authority to review the advertisements and they don't -- they don't do it. And so if the State Courts don't do it, then no one will do it.

Now Mr. Eakeley wouldn't even concede that Your Honor's absurd example would violate this. And if that doesn't, then I can think of absolutely no situation in which anyone could ever bring a consumer fraud claim against a telephone company for outrageously misleading advertisements, putting aside, I think the issue of reliance. And I should add that on the issue of reliance, reliance is not a necessary element for consumer fraud. It is for legal fraud and it is for negligent misrepresentation. It is not for consumer fraud, nor is intent, nor is damages. And so when

you're talking about the consumer fraud claim, none of those arguments that counsel articularly made even address the consumer fraud claim.

With respect to the contract, I don't take issue that a document referred to in the pleadings, specifically a contract, can be reviewed by the Court on a motion to dismiss in a contract case. We don't have a contract case. We withdrew it. And the only issue before the Court is whether these advertisements are misleading. And frankly, if the Court were to get into that type of an analysis and make a determination as to whether the advertisements were misleading, the Court would really be finding fact on a motion to dismiss, and I think that Mr. Eakeley would concede that that's not a proper thing to do on a motion to dismiss.

What is the -- Mr. Eakeley asked what is the jury going to find? What the jury is going to find is whether the ads were misleading. That's what the jury -- the jury is not going to sit there and replace the FCC in determining whether the service was reasonable service or whether the rates were reasonable rates. What the jury is going to sit there and do is going to look at the ads, is going to hear testimony and determine whether the ads were misleading given what was being provided by AT&T, and I think that's a perfectly

proper function for a jury on a consumer fraud case.

And like I said, if the jury doesn't do it, we know the Federal regulators don't do it, no one will ever do it. And then AT&T is indeed free to make any misrepresentation they want, suggest service is virtually anything and they can never be held accountable for that.

So I think that the regulatory scheme is pretty clear in that the one thing -- the one thing left to the states and the State Courts is to determine whether advertising and representations made to consumers are fair and reasonable and violative of that State's consumer protection. And we brought this on behalf of New Jersey consumers because we feel that New Jersey consumers are entitled to the protections afforded to them by their legislature. And the legislature -- I think that the law is pretty clear and I don't think there's any reasonable contention that this complaint doesn't state a claim for consumer fraud.

MR. EAKELEY: Just one more --

THE COURT: I'll hear everything and anything that everybody has to say.

MR. EAKELEY: Just picking up where Mr. Pinilis left off. He wants the jury to decide whether the ads are misleading. How -- what is the thought process that

has to go on in order to do that? Well, obviously, the ads have to be displayed, but then they have to be -- the adequacy of the infrastructure has to be examined. Are there -- how many towers do they have? How many towers should they have had in order to have reduced the blocked or dropped calls? Was the service reliable? How much more reliable should it have been? How do you evaluate that? What's the difference in the price of that service between the FCC-approved rate and what the plaintiffs were either promised or represented or received? That gets you right into rate regulation, adequacy of service and adequacy of infrastructure.

And as the District Court in Bastien put it, to pretend that plaintiffs' claims do not attack adequacy of service and infrastructure is to stretch the English language to an extreme.

THE COURT: How do you answer Mr. Pinilis' suggestion, if not argument, that the FCC will not and would not consider this type of claim?

MR. EAKELEY: Well, I think if we got to that extreme, Your Honor -- first, I think they would. But at that point, we get into an exercise of primary jurisdiction, I believe. The Court -- I mean there is clearly a regulatory expertise being implicated here and if there is -- if the case is not preempted because

there is a possibility of some advertising claim not affecting service or going beyond what the Congress intended that could survive, then I think the Court's duty would be to defer to the FCC and see whether or not in fact they'd take it. But we're not -- that is, in fact -- the Seventh Circuit starts out in Bastien, more or less musing about whether the doctrine of primary jurisdiction should apply. But I don't -- I think that the holding in Bastien is quite clear. That case and this case are not the type of an extreme that even suggests that there is room for argument, and these are claims that were considered and deemed preempted by the Seventh Circuit. I know Your Honor is not bound by the Seventh Circuit, but is the first Court of Appeals in the United States to reach the issue of the applicability of Section 332 in this context. But no Court has gone in a contrary direction, and I think the FCC ought to be given an opportunity to consider the extreme before a case which is not the extreme is permitted to escape or avoid preemption in this Court.

THE COURT: Thank you.

MR. PINILIS: Since you offered. You'll be sorry. I think what the jury is going to evaluate and it's what a jury evaluates in every single consumer fraud case. What were they promised and what did they

get? That's what the jury is going to evaluate. It's what a jury does in every single advertising case that a jury is ever faced with, and I don't think this case is any different than that. And I would say that the FCC -- the FCC not only is not authorized to construe the New Jersey Consumer Fraud Act. I would venture to say the FCC is not competent to construe the New Jersey Consumer Fraud Act. There is nothing that gives the FCC the authority to weigh an advertisement against the requirements, the strict requirements of New Jersey State law concerning consumer fraud.

So not only do I think they wouldn't, I don't think they can. So to suggest that we should somehow submit this claim to the FCC I think is an absurdity. I don't think the FCC has no authority and that's precisely why the savings clause is within the Communications Act because the FCC can't consider it and it's this hole within the Communications Act which the legislature specifically left for the states to regulate. And State Courts or Federal District Courts, and one State Court in Washington have said, yes, there are situations where advertising is what's being challenged, not rate making, not market entry, and that's what's happening here.

And what we'd ask a jury to decide is to look

at the advertisements in context, including radio advertisements, print advertisements, website advertisements, telephone advertisements, and we'd say to them, in context, is that something other than what people got? And that's really the -- that's the basis of the claim. That that's a consumer fraud claim and that's permitted by the Communications Act.

MR. EAKELEY: Could I just cite the Court to the Southwestern Bell case in our briefs where the Federal Communications Commission indeed grapples with issues such as these. And also, Your Honor, Section 201(b) of the Federal Communications Act, which again authorizes the Federal Communications Commission to police unreasonable practices. The Consumer Fraud Act is a state regulation and as applied to the determination of what the plaintiffs received by way of service or infrastructure is preempted. And I think that's the short of it.

It's also curious -- Mr. Pinilis said the jury would get to decide what was promised and what they got. Well, in fact, that's precisely the contract claim that he has conceded is preempted.

MR. PINILIS: No, I don't think so. I think that what -- what the jury is going to determine is whether it's an unconscionable commercial practice to

say, this is what you'll receive when you receive something else. Not whether it's a breach of contract. There are different element. It's a total different cause of action whether it's an unconscionable commercial practice under our Consumer Fraud Act, bearing in mind that you don't have prove intent, you don't have to prove reliance, you don't have to prove damages. Whether what was told to the consuming public was different in such respects to create -- to make it an unconscionable commercial practice to tell them, to tell the consuming public that in respect to what they ultimately received.

THE COURT: Counsel, thank you. I want to reflect upon what you've said, but I'm going to decide this motion this afternoon.

I will be back on the bench at 2:30. I will give you my oral decision at that time. You can leave your papers and belongings here if you wish.

MR. EAKELEY: Thank you, Your Honor.

MR. PINILIS: Thank you, Your Honor.

(Off the record. Back on the record)

THE COURT: I make the following findings of fact and conclusions of law.

This is a motion to dismiss which seeks the declaration by the Court that the claims contained in

this class action are preempted by a congressional action and claim that the complaint fails to state a claim upon which relief may be granted.

Without parsing the entire complaint, it nevertheless consists of a first count alleging violations of the New Jersey Consumer Fraud Act, a second count alleging common law fraud, a third count alleging a breach of contract, a fourth count sounding in quasi-contract entitled unjust enrichment, and the fifth count sounding in negligent representation.

Under the branch of the motion that seeks to dismiss for failure to state a claim, I would employ the usual test under Printing Mart v. Sharp Electronics, that is to read the complaint indulgently in favor of the plaintiff, to scour it to see if it suggests a cause of action. Even if it does not and the relief is appropriate, generally speaking, such a motion would result in an order of dismissal without prejudice.

This motion seeks more substantial relief on the grounds that Section 332 of the Federal Communications Act, 47 U.S. Code 332, preempts a State Court from engaging in providing a remedy such as sought in this case. There is no doubt that Congress intended complete preemption when it said, quote, "No state or local government shall have any authority to regulate

the entry of or the rates charged by any commercial mobile service." 47 U.S. Code 332(c)(3). That is what the defendant claims this case is about.

The plaintiff claims this case is about the relationship between the defendants and its customers and potential customers insofar as it has asserted the advertising media transmitted to potential customers and customers violated the New Jersey Consumer Fraud Act and was either fraudulent or constituted a negligent misrepresentation.

The essence of the claims of the plaintiff relate to the May 1998 introduction of the AT&T Wireless Digital One Rate Plan in which the plaintiff asserts that representations made concerning the quality of the service were violative of state law principles. The complaint refers to challenges to defendant's advertisements which plaintiff asserts promises unfettered access to the network, no delays in availability of the system, and, in fact, plaintiff claims that there are times when there is an inability to access the network. There are delays in the availability of the system. There are involuntary disconnections.

The complaint asserts that the AT&T defendants are aware and have been aware that there is and has been

insufficient capacity to service the current subscribers of the Digital One Rate Plan. The complaint asserts that the plan had an insufficient digital network to adequately service its ever-expanding subscriber base. It asserts that the plan is completely unreliable and then says as a result subscribers regularly experience numerous problems, some of which I have already described.

The complaint says, in addition, quote, "Thus, the AT&T defendants cannot deliver upon the promises and representations relating to the capacity of the service as set forth in the ads and otherwise."

The leading case is Bastien v. AT&T Wireless Services, Inc., 205 F.3d 983 (7th Circuit), decided March 6th of this year. In that case in a similar-sounding complaint, the Seventh Circuit determined that the allegations of the plaintiff Bastien were in effect claims touching and affecting rates and entry into the market. Defendants claim that this case is dispositive in the sense of being a well thought out and well-developed analysis recognizing that this State Court is not bound by the principles of law expressed by the Seventh Circuit.

The opinion makes a number of statements, one of which is very pertinent to my analysis. There are

others as well that I'll probably touch on. And it says on -- it looks like it's Page 989 that, quote, "Should the State Court vindicate Bastien's claim, the relief granted would necessarily force AT&T Wireless to do more than required by the FCC, to provide more towers, clearer signals or lower rates. The Statute specifically insulates these FCC decisions from State Court review."

The plaintiff claims that Bastien may be right on some of the issues raised in the Bastien complaint, but it is in apposite to the claims here in that there are a number of cases of which Tenore v. AT&T Wireless Services is emblematic. That case, 136 Washington 2nd 322, also 962 P.2nd 104, the Supreme Court of Washington in 1988, in which claims were held available for State Court analysis.

Most, if not all, of the claims that survived preemption related to disputes over representations made or lack of representations made vis-a-vis billing practices and accounting issues. This case, Union Ink's case, is not so positioned. It seems to me that in order to demonstrate any of the causes of action the proofs will necessarily implicate questions about infrastructure, questions about quality of service which in my view is different from merely not rounding up or

not rounding down, or doing any rounding at all of time on the line.

Bastien also reminds all of us, and particularly me as a trial judge, that Courts are not bound by the names and labels placed on claims by a plaintiff. Now in this opinion, it's talking about looking at pleadings to see if they're either stealth complaints or disguised complaints in light of Federal questions. But State Courts, and this Court in particular, routinely engages in trying to parse the core of the claim without regard to the sometimes misleading -- and I'm not suggesting any intentional misleading -- labels that are put into complaints for ease of reference and perhaps ease of understanding.

At its core, if a jury will be called upon to balance, or first to consider, then reflect upon, and then balance evidence that touches and affects questions of infrastructure -- hardware might be a shorthand reference, although I know it's a term of art and I don't mean it as a term of art. That, in my view, under Bastien and under -- I'll have it in a minute here -- AT&T v. Central Office Telephone, Inc., at 118 Supreme Court 1956 is, in my view, a touching on market entry issues. And by the legal or administrative fiction, perhaps, or linguistic slight of hand in AT&T v. Central

Office Telephone may also touch on rates with this thought, quoting, "Rates, however, do not exist in isolation. They have meaning only when one knows the services," and here I add, or lack of services, "to which they are attached. Any claim for excessive rates can be couched as a claim for inadequate services and vice versa."

I won't repeat the well-understood principles as to why Section 332 of the Federal Communications Act exists nor need I address the exception clause contained in 332 because I do not see this case as touching on -- let me put it the other way. I do see this case touching on market entry and rates for the reasons indicated. The savings clause of 47 U.S. Code 414 does not swallow the rule in 332 and I am satisfied that there is preemption under congressional policymaking for the nature of this claim.

I pause for a moment in my decision making to reflect on the argument that this plaintiff or these plaintiffs, or even the class, might be remediless and it occurred to me that there are other instances and circumstances where injured parties, and I'm not suggesting these plaintiffs were not injured, are left remediless or substantially remediless because of preemption. And the one that comes to my mind, first

and foremost, are cases involving persons injured by insecticides and rodenticides and which are -- which claims are not available in State Court generally under statute -- the Federal Statute generally referred to as FIRPA. It means the Federal Insecticide and Rodenticide -- I don't know what the "P" stands for, but there's New Jersey law on it. I had a case like it. It's a terrible outcome. It's a hardship to the plaintiff. And it simply is reflective of the relative fears of influence that we occupy from the President, the Congress, to the States, to local government on down.

And so, while I paused to think about what this result might mean, and this is not by way of any apology, it simply is a result of our Federal system of authority. And if the plaintiff is left without a remedy, that is the function of the Congress to remedy, it is the beyond the scope and ability of me to do. And I say that knowing and fully appreciating the strong public policy of this State that is intended to protect consumers from sharp advertising practices in the Consumer Fraud Arena and in related common law causes of action.

This case, and Bastien, are qualitatively unlike the -- I know I'm repeating myself now -- unlike the rounding-up cases because of the touch and effect

aspect on the network, the infrastructure, the hardware that must necessarily be evaluated by a jury. A circumstance and a consequence that I do not believe Congress intended to happen.

The substance of this claim goes to those issues even though the form suggests it's merely an advertising dispute. I do not specifically reach and I decline and defer to reach whether the complaint states a claim upon which relief can be granted outside of the preemption arena. I'm satisfied that preemption answers the question and I will enter an order dismissing the complaint on that ground only.

Mr. Eakeley, I do not know because I don't remember whether or not your order broke out the basis for the decision or not.

MR. EAKELEY: No, I can't recall, Your Honor. I'm sorry.

THE COURT: Maybe I can find it. Wait, here, I have it. I can tell you.

I'll use your form of order and my findings and conclusions in the transcript will reflect the limited basis upon which it has been decided. That order will be signed today and will be available next week. It will be sent to Mr. Eakeley straight way. And, Mr. Eakeley, I will rely upon your good offices to

get it to plaintiff's counsel right away so that if plaintiffs seek review in the Appellate Division, they will not be unduly delayed.

Are there any questions?

MR. PINILIS: Yes, Your Honor. I have a copy of the order and the order says only that it's dismissed pursuant to Rule 4:6-2. So if I could just ask Your Honor to change it to reflect that it's being dismissed based on the preemption issue.

MR. EAKELEY: No objection to that, Your Honor.

THE COURT: Okay. Okay. I have changed the order so it will read -- and this may not be the most elegant way to state it. But, ordered that defendant's motion to dismiss pursuant to Federal preemption principles is granted and the class action complaint is hereby dismissed with prejudice. A copy of this order will be served on all counsel within five days. That's five days from your receipt of it.

In fact, let me know something. If you both want to stick around five minutes, I'll have it conformed and I can give both --

MR. EAKELEY: That's easier.

THE COURT: So you can start consulting with your clients straightway. You'll have a signed order. Presumably, you're going to order a transcript if this

goes anywhere anyway. Can you do that? I have marked it here. All right. My law clerk will be glad to provide you with that. Are there any other questions?

MR. PINILIS: No, Your Honor. Thank you, Your Honor.

MR. EAKELEY: Thank you.

MR. PINILIS: Have a good weekend.

THE COURT: Thank you. You, too.

(Proceedings concluded)

CERTIFICATION

I, LISA A. WEITE, the assigned transcriber, do hereby certify the foregoing transcript of proceedings in the Bergen County Superior Court on June 9, 2000, on Tape No. 204-00, Index Number from 3456 to 6948, and Tape No. 205-00, Index Number from 001 to 1125, is prepared in full compliance with the Transcript Format for Judicial Proceedings and is a true and accurate transcript to the best of my knowledge and ability.

Dated: 6/19/2000

Lisa A. Weite
LISA A. WEITE, AD/T 410

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FACSIMILE TRANSMITTAL SHEET

TO:	FROM:
Carl Hilliard	William J. Pinilis, Esq.
COMPANY:	DATE:
Wireless Consumer's Alliance	July 7, 2000
FAX NUMBER:	TOTAL NO. OF PAGES INCLUDING COVER:
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NOTES/COMMENTS:

Carl:

Enclosed ~~are~~ is the Order~~, and the transcript form the hearing. Please call me if I can help in any~~ other way.

-Billy

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SUPERIOR COURT OF NEW JERSEY
LAW DIVISION: BERGEN COUNTY
DOCKET NO. L-8974-99

UNION INK CO, INC. and MARCI BLOOM, Plaintiffs, vs. AT&T CORP. and AT&T WIRELESS SERVICES, INC., Defendants.	Civil Action **ORDER DISMISSING PLAINTIFFS' COMPLAINT**

This matter having been brought before the Court upon the motion of Lowenstein Sandler PC, attorneys for defendants AT&T Corp. and AT&T Wireless Services, Inc. ("Defendants"), returnable ~~March 3,~~ 2000; and the Court having considered the submissions filed on behalf of Defendants, any opposition thereto and the arguments of counsel, and good cause appearing;

IT IS on this 9 day of JUNE, 2000

FEDERAL PREEMPTION PRINCIPLES IS

ORDERED that Defendants motion to dismiss pursuant to ~~R. 4:6-2 is~~ granted and the class action complaint of Union Ink Co., Inc. and Marci Bloom is hereby dismissed with prejudice; and it is

FURTHER ORDERED that a copy of this order shall be served on all counsel within FIVE(5) ~~ten (10)~~ days.

J.S.C.

[X] opposed

[ ] unopposed